

present in a nominee's record. Not every nominee who turns out to be a judicial activist or soft on crime can be ferreted out in the confirmation process. Indeed, as I mentioned earlier, every President is able to obtain confirmation of most of his nominees.

The general judicial philosophy of nominees to the Federal bench reflects the general judicial philosophy of the person occupying the White House—the Oval office, if you will. And differences in judicial philosophy have real consequences for the safety of Americans in their streets, homes, and workplaces.

I want to say that I believe the next President of the United States, whether it be President Clinton or whoever, is probably going to have the opportunity to nominate at least two Supreme Court Justices, maybe three. If President Clinton is reelected, he will have appointed better than 50 percent of the total Federal judiciary. It is something we all have to think about. I decry these kind of decisions made by the Clinton judges that I have named so far, and Carter judges—one.

I believe you could probably point out deficiencies in judges of every President. But I am really concerned, in this day of rampant criminal activity, with the flood of drugs into our society, that we have judges who are being appointed on a daily basis who have a philosophy like Judge Barkett's, who do not blame the acts of these criminals on themselves but blame them on society, blame them on their environment, on anything but their own volition and their own desire to do wrong.

I believe there are wrongs in our society. I believe that there are injustices. I believe that there is still discrimination in our society against certain people. I believe these things are wrong.

On the other hand, when people who are not insane commit heinous murders and heinous crimes and are spreading drugs among our young people and are destroying the youth of this Nation and doing it with full intent to do so and to profit from their decisions, or because they are murderers, then I think we ought to come down pretty doggone hard on them; that is, if we want to have a civil, humane, free, and fair society.

I will have more to say about these judges in the future, but I have become so alarmed about some of these decisions that I just felt I had to come to the floor today and make this point, since we on the Judiciary Committee have this very important honor of working with these judges. I do not think anybody can say that I have not done my very best to try to accommodate this administration, to try to help them in the appointment of judges. I am going to continue to do that as long as I can. I want to be fair to this President.

On the other hand, these type of judges are giving me the chills, and I think they are giving the American people the chills as well. We have to consider just who we want appointing these judges in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

FINISH WORK BEFORE WE RECESS

Mr. GLENN. Mr. President, I am glad to see there are a few of us left in Washington this morning: The Presiding Officer, Senator HATCH from Utah, myself—maybe there are a few other Senators around Capitol Hill, but there are not very many. It is that situation I wish to address briefly this morning.

I do not come to the floor very often and give lengthy speeches. This will not be a very lengthy speech this morning either, but sometimes I think a sense of responsibility on how the Senate conducts its business or does not conduct its business is in order. It is that issue I want to address this morning.

Mr. President, the Senate conducted rollcall votes on Wednesday. And although we are not technically in recess, there are no plans to have votes until February 27. No vote of the Senate was taken to decide whether we would recess. It was just decided we would go through the charade of pro forma sessions, of looking like we are doing something when actually we are not. I think it is important for the American people to know about what is going on here, because we have not passed all the appropriations bills for the fiscal year that started last October.

We are 5 months into this fiscal year without having dealt with the unfinished business of the Senate.

Currently the following departments are operating without regular appropriations bills. The Department of Veterans Affairs; the Department of Housing and Urban Development; the Environmental Protection Agency, the Department of Commerce, the Department of State, the Department of Justice, the Department of the Interior, the Department of Labor, and the Department of Health and Human Services.

We passed a continuing resolution. That is what we call it. A continuing resolution means you are supposed to go ahead and continue your operations as they were in the previous year if we have not passed an appropriations bill. But this year there is a new angle to this because in order to get a continuing resolution passed on most of these departments, most of what we would normally have had as a continuing resolution is not there because we have reduced most of them by 25 percent over what their expenditure limits would have been. In other words, most of them are having to limp along and make reductions in their activities.

I want to spell some of these out in a few minutes. But let me just say that five appropriations bills remain unfinished, and funding for the District of Columbia is not complete. We have yet to agree on a plan to balance the budget over the next 7 years.

We do not have a welfare reform bill, nor Medicare reform, nor Medicaid reform, nor health insurance reform, nor product liability reform, nor Superfund reform, nor an Endangered Species Act, nor a Safe Drinking Water Act, nor a Clean Water Act, and we even face defaulting on the debt endangering the full faith and credit of the United States come March 15 if we have not acted. And, incidentally, all of these CR's also run out. So there would be no funding for these agencies or departments come March 15 unless we take action of the full Congress to correct it.

All of the above is what we were supposed to be doing back in the 1995 calendar year that would apply to fiscal 1996 which we are in right now and have been since last October. We have not even started yet on the 1996 agenda that will be for next year's budget. So we are completely behind.

This lack of achievement will not stand in the way, however, of a 20-day break in the Senate schedule. I know that recesses are scheduled during a legislative session. But I want to call the attention of the Senate and the attention of the people of this country to the fact that this election year the Senate schedule is already curtailed, and we are well behind even on this year's activity.

Mr. President, by my count, if we assume an Easter recess, a Memorial Day recess, a Fourth of July recess, an August recess for the party nominating conventions, and an October 4 sine die adjournment—and a not unusual Senate 4-day workweek. The norm here is that nothing of substance usually happens Monday morning and there is nothing of substance normally on Friday afternoon. There are only about 88 legislative days left in this 104th Congress this year to accomplish the business of last year as well as the business of this year.

It is probably more like 70 to 75 days when we know the actual number of days when Members are here in numbers to conduct business. Sometimes we put things off from one day to another because certain people are not here, or their schedule has been accommodated by leadership on both sides of the aisle. But I think even an optimistic count, if you look at the calendar, is that we will have about 88 days left this year. That may come as a shock to a lot of people because they think we are here in mid-February and we have all the rest of this year to get our job done. We do not. Of the legislative days here, we have about 88 days left for this year right now. I do not see how we accommodate our business that has to be done in that time period.

Let me point out some of the problems that the Nation faces and we avoid by not being here doing our work. I requested that some of the affected agencies tell me how they are

dealing with these cutbacks right now. This is not something speculative out there into the future. We can surmise as to what may be out there in the future. But here are a few things that are being curtailed right now, services that the people of this country thought they were getting and are beginning to be cut back on. Why? Because we have not passed the appropriations bills, and because we accommodated the demands of mainly the people over in the House that said that if they were going to even make a continuing resolution it had to be with major cutbacks in fundings now. In other words, they are doing what should be legislative cutbacks by just saying we will not provide the money, and we just refuse. So for most of these agencies or departments some of them are going along on about a 25-percent reduction.

Let us look at the Environmental Protection Agency. According to the EPA, 40 percent of its planned inspections of industrial facilities were missed during this period—40 percent. EPA typically conducts 9,000 inspections a year and takes 3,700 enforcement actions. These inspections help protect our drinking water and our air quality. Continued funding shortfalls will not allow EPA to catch up with its backlog. The work necessary to develop tap water standards for pollutants like cryptosporidium will be delayed. A couple of years ago, in 1993, 100 people died and many more were sickened by cryptosporidium. Even though this is a priority issue, these standards take time. And this is a complex issue requiring extensive data collection which is being delayed right now.

Toxic waste cleanups are being slowed. Cleanups at hundreds of sites were stopped during the shutdown, and half of those will not be able to resume quickly. Further funding shortages will only cause further delay. Three new cleanups in Ohio, my home State, at Uniontown, Dayton, and Marietta may not begin this year. It looks as though they will not begin this year as scheduled.

Further delays are expected in efforts to control industrial discharge into rivers and streams. The public's right to know about toxic chemical emissions in their area is jeopardized. Delays in pesticide registration will affect crop protection. Standards for controlling toxic industrial air pollutants will be delayed.

A toxic sweep task force was established by Cleveland and the State of Ohio to rid the city of toxic problems that pose threats to the public health and welfare, fire safety, and serve as barriers to property redevelopment. Twenty-seven properties have been cleaned up under this program. EPA help was requested on three of the more difficult sites. However, EPA cannot respond, and redevelopment is delayed and may not occur at all.

Those are just a few of the things that are going on just with the EPA

budget because of this failure of the Congress to act.

Under Health and Human Services, although many critical programs received full-year funding, the level of funding is not keeping up with the increased need due to our growing elderly population, and especially the old and frail elderly who need health and support services in order to just stay in their homes and their communities.

The Health Resources and Services Administration supports programs such as community and migrant health centers, and maternal and child health block grants. The impact of interrupted and short-term funding is expected to result in reduced services to the poor, and will be detrimental to the health services infrastructure and the quality of services, including preventive services.

Because final action has not occurred, uncertainty exists as to the availability of funding for Ryan White CARE Act programs. This inability to predict the annual level of funding available to cities and States will impact planning and operating systems for HIV/AIDS victims. The cities of Cleveland, Fort Worth, Hartford, Minneapolis, Sacramento, and San Jose now qualify for title I—HIV Emergency Relief Grant Program to provide emergency assistance to localities disproportionately affected by the HIV epidemic—funds under both existing and proposed legislation because of the ever-growing need of HIV/AIDS services. Awards to all new cities must be delayed until there is permanent legislation.

Under education—Mr. President, the largest investment we make to boost low achievement in educational skills is title I which provides some 50,000 schools and about two-thirds of our elementary schools across this country, with funds for individualized instruction, smaller classes, extra time to learn after school, use of computers, and more parental involvement. According to Secretary Riley, at continuing resolution levels title I will be cut by \$1.1 billion, or 17 percent. This will deny help to more than 1 million students and cost 40,000 to 50,000 teaching and teaching aides' positions. As an example, Chicago could lose some 600 teachers. In Beaver Local School District of Lisbon in northeastern Ohio, that means the elimination of the program for the middle school, losing three teachers, and ending remedial reading and math for 120 children. Ohio could lose over \$50 million.

That is just an example in my home State. But the same thing is going on all over this country—cutbacks in education and helping kids get a decent start in school, giving them remedial help that they need is being cut back right now.

The Department of Labor is operating at funding levels provided in the House-passed bill. Should this continue, summer jobs for youth will be eliminated wiping out Federal support

for summer jobs for 600,000 young people—600,000 young people, if we continue to do nothing the way we have been doing, will not have summer jobs.

Employment and training programs would be reduced by \$1.6 billion, meaning 800,000 other people would be deprived of much needed services. Back to Ohio again. Ohio would receive \$35 million less for job training and assistance with 30,000 people unserved that normally would have been helped during that period.

Veterans' Congress' failure to deliver an acceptable VA-HUD appropriations bill is having a devastating effect on veterans programs. Veterans medical care is compromised by the requirement to eliminate 5,100 full-time medical employees at VA facilities. This will result in treatment of 36,000 fewer inpatients and 800,000 outpatients. This is the equivalent of closing three medical clinics with an average of 300 beds each. How can we possibly justify that? In addition, funding levels under the current CR preclude construction of two hospitals that are needed at Travis Air Force Base in Fairfield, CA, and Brevard County in Florida. It also eliminates funding for five projects required to renovate and correct major deficiencies in older VA hospitals.

How can we possibly look any veterans that are in those hospitals, who sacrificed in combat or wherever, however they came to be in the hospital, in the eye and say, "Well, you are not in a war so we are going to cut you fellows out; we are going to cut the funding back, shut the facilities down." I find that very hard to accept.

The Justice Department. Under the current continuing resolution, the Community Oriented Policing Services, so-called COPS Program, is funded at 75 percent of its 1995 levels. At this level, 1,674 additional police officers could be hired. Under the President's request, 3,166 could be added. This means there are 1,492 fewer cops out there on the beat.

Mr. President, I went up and visited one of the COPS programs in Toledo, OH, not too long ago. It is working very well. They have the additional police out in the community organizing the people to have community watch programs and cooperative programs. It is working very, very well. But those programs are now going to be reduced or eliminated or new ones will certainly not be started.

The Department of Commerce. In the Department of Commerce, a variety of programs have been affected by delays which have impacted fishing communities, delayed NOAA's satellite procurement program, threatened funding of National Weather Service contractors and suppliers, disrupted orderly trade relations which hinders exporters, threatened Economic Development Administration assistance to local governments and businesses following military base closures. Review and processing of applications for new State coastal zone management programs in Ohio and Texas and Georgia

have delayed eligibility for Federal funding of \$2 million a year.

Mr. President, these are just a few examples of the consequences of our inaction. Beyond the terrific impact of these shortfalls is the question of how can we expect to operate a system of government in the most efficient way possible while supporting it in only bits and pieces—starts and stops. No organization can operate effectively when run on that kind of an interim basis. Planning is hindered when you are funded for the next 6 weeks and uncertain about another, and whether or not there will be a 10th continuing resolution. We do not even know that. We do not know what the conditions of acceptance of another CR will be. The CR permitting the action I am talking about here this morning expires on March 15 along with the debt limit.

You can be certain that efficiency of Government services will be questioned when it comes to next year's funding but Congress will not likely blame itself. Federal workers become an all-too-easy target.

Mr. President, yesterday's Washington Post says, and I quote, "Congress has gone home to campaign. Given the little they have accomplished to date, you wonder what the members will campaign on, but resourceful troopers that they are, they will no doubt find something."

After a discussion of the farm bill, the Post suggests that Congress, "Can go on to the rest of their unfinished business, like raising the debt ceiling so the Treasury doesn't have to default, finishing this year's budget so they can get on to the next and figuring out what if anything they want to do about Medicare, Medicaid, welfare, the Clean Water Act and a couple of other trifles like that."

"Trifles" I am sure they meant tongue in cheek.

Another clip out of the newspaper, Kevin Phillips noted in his column of February 7 in the Los Angeles Times, "The 104th Congress may be the worst in 50 years."

The forces of an ideological jihad have failed to find workable compromise on their agenda and have forgotten that democracy depends on compromise. Failing to move a radical agenda to turn back America's clock, an effort to shut down the executive branch of the Government also failed. Now it appears we are applying the same tactics to the legislative branch of Government.

Mr. President, not doing business is no way for the Congress to do business. One of the few successes of last year was requiring Congress to abide by the same laws as everyone else. I believe we are violating at least the spirit of that law when we hold Government employees hostage, when we borrow from the pension funds to keep the Government afloat, when we drive the Government to the brink of default, when we do not complete the job we were hired to do in the time we were

supposed to do it, when we force the agencies and departments of Government to operate on an interim basis facing imminent cutoffs of funds and in a final note of folly when all else fails the Congress leaves town with very limited legislative time left in this calendar year of 1996.

Mr. President, maybe we should require that Congress abide by another law that people in all of our communities have to work with also, and that is no work, no pay. We had votes on that. They did not pass. Maybe we ought to reconsider that when we get back in here.

Meanwhile, Mr. President, everyone is out campaigning, doing whatever they are doing while the work of the Government sits here and is not being accomplished. We were elected to come here and deal with the problems and the programs of this country. We have not even dealt with the work we were supposed to do last year, and we certainly have not gotten around to completing that or even beginning the work we are supposed to do this year and time is very, very short.

Mr. President, I ask unanimous consent that the editorial out of yesterday's Washington Post and also the column by Kevin Phillips out of the Los Angeles Times of Wednesday, February 7 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 8, 1996]

RECESS

Congress has gone home to campaign. Given the little they have accomplished to date, you wonder what the members will campaign on, but resourceful troopers that they are, they'll no doubt find something. The Senate was the last to leave; first it passed a farm bill. That would be fine; it's not a bad bill. But the House hasn't acted yet and isn't scheduled to return until the end of the month, the administration claims to have serious reservations about the bill in its present form, and farmers and their bankers would like to know before planting season starts what the rules are going to be for the year ahead.

That's one of the factors that impelled the Senate to act. Next week's Iowa caucuses may have been the other, Iowa being a leading farm state. Neither Majority Leader Bob Dole nor Agriculture Committee Chairman Richard Lugar wanted to enter the caucuses empty-handed. Now they have at least a provisional bill to discuss.

The farm programs are outmoded. Mr. Lugar was one who pointed that out early on last year, an unusual act for a farm state Republican and presidential candidate who had just assumed the chairmanship. The programs are both costly and inefficient. Most of the money goes to the largest producers least in need, and to the extent that farmers produce for the government rather than the market, the system induces an inefficient use of resources. There does need to be a safety net to protect consumers and producers alike against huge swings in the markets. But the guarantees are set too high. To protect itself, the government then seeks to prop up market prices in part by limiting production and in the process costs the country sales and market share abroad. The payments are also geared too much to production and not enough to conservation.

The Republicans proposed a reform—to break the tie between production and payments, ratchet the payments down over the next seven years to save money while leaving farmers free to produce what they choose and appoint a commission to help determine what kind of successor programs the country should have. Ranking Agriculture Committee Democrat Patrick Leahy insisted on adding amendments reauthorizing the food stamp and other feeding programs, in part to give them some parliamentary protection, and broadening the principal conservation program to cover more than soil erosion in the Plains states. More money could be used to prevent agricultural runoff and improve water quality elsewhere in the country, for example.

All that's to the good. In the House, however, Republicans who could otherwise pass a similar bill over Democratic objections are divided. Some rightly want a chance to amend the sugar and peanut programs, both of which jack up prices unnecessarily at the checkout counter but which were preserved to buy committee votes for the broader bill. The administration meanwhile wants to change the broader bill, which the president has already vetoed once; it was a relatively minor part of the GOP proposal to balance the budget that the rejected last year. Mr. Clinton's basic, unhelpful position is that the farm programs don't need to be changed much at all.

And then, when they get the farm problem settled, they can go on to the rest of their unfinished business, like raising the debt ceiling so the Treasury doesn't have to default, finishing this year's budget so they can get on to the next and figuring out what if anything they want to do about Medicare, Medicaid, welfare, the Clean Water Act and a couple of other trifles like that.

[From the LA Times, Feb. 7, 1996]

CONSIDER THIS CONGRESS THE WORST IN A HALF-CENTURY

(By Kevin Phillips)

WASHINGTON.—The 104th Congress may be the worst in 50 years.

It has another 10 months before it nails down top (bottom?) honors. And it will, of course, face tough competition from four other eminently second-rate Congresses—the 80th, 89th, 101st and 103rd. Even so, it's time for the national debate to start, because what Americans decide to do about Congress will color what kind of president they'll want to pick—or settle for—in November.

Believers in the Washington system—once described as dropping coins into the elephants' and donkeys' mouths and getting laws and regulations out the other end—were cheered in early 1995 by the apparent renewal of tired political parties and government mechanisms represented by ultrapowerful new House Speaker Newt Gingrich (R-Ga.) and his bold agenda of national change.

A year later, two-thirds of the "contract with America" is sitting in the Senate's dumpster or crumbled in the president's veto basket; Congress' ratings are back to autumn 1994 contempt levels, and Gingrich has set records for first-year credibility loss by a new speaker. The notion of a "reform" GOP Congress is now right up there with Tinkerbell and the Tooth Fairy; and Washington lobbyists are wondering how they will ever collect on the regulatory breaks and tax loopholes they thought they'd bought at the Grand Old Auction Party last winter.

Recent national surveys have shown voters saying President Bill Clinton should be re-elected to block the unpopular Congress. But other new polls show the electorate is starting to tilt Democratic for the House, as well. So November is emerging as a dilemma-cum-

challenge: Would dumping the House GOP and eliminating Gingrich as speaker make it safe to also oust Clinton as president—especially if his family and staff start setting records for time spent before grand juries? Clinton's great success with his State of the Union speech isn't likely to repeat itself if he has to make a State of Family Integrity follow-up.

But Clinton's foibles have already been debated in two elections—1992 and 1994. It is the failures of the GOP Congress that might well be the focus of 1996.

Take the "contract with America." This started out as a smart campaign ploy, but GOP strategists let its dozen or so promises—from budget balance to a line-item veto—become the be-all and end-all of Republican congressional achievement. A few good ideas—congressional accountability and prohibition of unfunded federal mandates being imposed on the states, for example—made it across Clinton's desk and into the statute books; but other popular themes (term limits) bogged down, and some ideas, such as tort reform and environmental overhaul, lost favor as the involvement of lobbyists became all too evident.

The collapse of public support was stunning. Polls by the Times-Mirror Center found that, in winter 1994-95, voters approved congressional GOP policies by 52%-28%; but, by January 1996, they disapproved, 54%-36%. The NBC News poll found virtually the same shift. Respondents had agreed with the GOP policies, 49%-22%, in January 1995; by January 1996, disagreement prevailed, 48%-34%. This is the sharpest slump in policy-approval ever measured for a new Congress.

The crown jewel of the contract—huge tax cuts tilted toward business and the wealthy combined with the seven-year zero budget-deficit blueprint—was especially flawed and, worse still, a practical contradiction. The tax cuts proved a zero-deficit program over seven years wasn't even a good idea. In 1994, all the European Union nations, except Luxembourg, had larger deficits than the United States. Ours was 2% of gross domestic product, theirs ranged from 2.1% of GDP in Ireland and 2.6% in Germany to a whopping 11.4% in Greece. These countries, too, face high health and pension costs, as well as job weakness; and the requirement that EU members get deficits down to 3% is feared in much of Western Europe as a recession prescription. The GOP's zero-deficit prescription for America would have been even more Hooveresque.

Meanwhile, the 104th Congress has emerged as a beacon light of hypocrisy when it comes to institutional reform and money in politics. The promise of term limits was quickly scuttled, and new GOP leaders, especially in the House, have used the same kind of closed-door legislative tactics they attacked under the Democrats. The vaunted lobbying "reforms" passed this winter turn out to have something else—a downshift from criminal penalties to civil penalties to civil penalties with the usual game of widening as many escape hatches as are closed. Discussing the loopholes in the new gift ban, the president of the American League of Lobbyists remarked, "I would prefer to call them pathways or, in some cases, interstates."

As for campaign finance, serious reform has already been mocked and foreclosed. Congress' new GOP leaders have collected bigger campaign contributions, from more special interests, than any previous set of first-termers.

The final mega-problem is the "extreming" of Congress since the 1994 election. Not only has the ideology been radical, but, on the House side, Gingrich and the 74 House GOP freshmen are becoming twin symbols of political excess. Recent polls on

Gingrich give him only a 26%-34% approval rating, while 55%-58% disapprove. No new speaker has ever dropped so far so fast.

The right-leaning freshmen are in just as much trouble. One January poll found 70% of Americans disapproved of the freshmen's willingness to shut down government in the budget debate, with 45% calling the freshmen "ideological extremists who are holding the federal government hostage."

The "extreming" of Congress has even spread to the hitherto centrist Senate. The rightward lurch of Senate Majority Leader Bob Dole (R-Kan.) signaled this shift, and the retirement announcements of five GOP moderates make a sharper swing to the right inevitable after they're gone. The new Senate GOP of 1997 will be far more like the current House GOP—not exactly an endorsement for keeping the Republicans in control.

Other Congresses that compete for the "worst in 50 years" title are the 80th (1947-48), the 89th (1965-66), the 101st (1989-90) and the 103rd (1993-94). The 103rd was the Democratic Congress that voters voted out in 1994, angry at its mix of petty scandals and ineffectiveness. Its biggest failure was that the Democrats were stale and deserved the boot after 40 years of unbroken control in the House.

The 101st Congress featured the forced resignations of Democratic Speaker Jim Wright and Majority Whip Tony Coelho. The 89th was the lopsidedly Democratic Congress that ran amok with the liberal legislation and overambition of the 1960s. The 80th was the last GOP Congress to face a Democratic president. It also went too far on economic, education and social welfare issues.

However, because the 104th has ideological radicalism, yet another speaker facing an ethics investigation and a record collapse of public esteem, it could turn out to be the wustest that got there the fastest—to paraphrase the famous confederate cavalry leader.

Is there a remedy? Not necessarily. Though defeating enough Republicans in the House to depose Gingrich as speaker could be a start. Giving the Democrats a narrow majority back won't empower them to do much more than squelch GOP excess. But in the long haul, it will probably be necessary to find some way of promoting a mix of third parties, campaign reform aimed at helping independent congressional candidates (just proposed by retiring Sen. Bill Bradley (D-N.J.)) and other changes designed to break the nexus between money and politics.

After all, if Americans do start deciding that the 104th Congress is the worst in memory—or even first runner-up—then it could be time for voters to demand a far different set of arrangements and reforms. In Congress, as well as in presidential elections, the two-party system, with its false promises and special-interest masters, has arguably become part of the problem, not part of the solution.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, February 8, the Federal debt stood at \$4,988,549,905,457.27, about \$12 billion shy of the \$5 trillion mark, which the Federal debt will exceed in a few months.

On a per capita basis, every man, woman, and child in America owes \$18,934.97 as his or her share of that debt.

RELEASE OF FBI REPORT ON FUTURE WIRETAP CAPACITY NEEDS

Mr. LEAHY. Mr. President, we took an important step in the last Congress to preserve law enforcement's wiretapping tool and increase privacy protection for our telephone and computer communications by passing the Communications Assistance for Law Enforcement Act. This law expanded privacy protection to cordless telephones, restricted the ability of law enforcement to obtain transactional information from e-mail messages, and improved the privacy of mobile phones by expanding criminal penalties for stealing the service from legitimate users.

This new law also imposed new requirements to ensure that court orders for electronic surveillance can be carried out, rather than stymied by new technologies used on our telephone networks.

Significantly, these new requirements for our Nation's telephone networks were accompanied by guidelines designed to bring public oversight and accountability to the process of implementing them. For the first time, decisions on how new and existing telecommunications systems will remain accessible to government surveillance must be made in the sunshine of public scrutiny.

Thus, the new law requires for the first time that law enforcement's demands regarding the number of wiretap, pen register, and other surveillance orders that telephone companies must be able to service simultaneously, are published in the Federal Register and scrutinized in a public procedure.

In compliance with this new requirement, the FBI published in the Federal Register on October 16, 1995, a proposed notice setting forth its capacity demands. According to the proposed notice, these capacity demands were predicated upon a historical baseline of electronic surveillance activity and an analysis of that activity. Yet, the Federal Register notice did not include publication of this underlying information.

Shortly after the notice was issued, I wrote to the FBI Director requesting copies of this information, and urging him to release the information to the public to ensure the fullest dissemination of the information.

I am aware that the comments filed by the deadline on January 16, 1996, in response to the proposed notice on behalf of civil liberties groups, telephone companies, and cellular companies have criticized the proposed notice for failing to disclose the supporting data for the capacity demands. As one set of comments filed by the Center for Democracy and Technology and the Center for National Security Studies noted, "it is impossible to say whether or not the capacity requirements proposed in the notice are justified" without the supporting data.